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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/674,585      | 09/29/2003  | Daniel J. Cook       | 14/1452US(1)        | 5402             |

22822 7590 08/16/2007  
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| EXAMINER |
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EREZO, DARWIN P

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| ART UNIT | PAPER NUMBER |
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3731

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08/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/674,585

Applicant(s)

COOK, DANIEL J.

Examiner

Darwin P. Erez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/29/07 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,139,088 to Galleher, Jr.

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(claim 1) Galleher discloses a combination of a tubular medical device and an adapter, the combination comprising:

a respiratory tube **12** having an elliptical cross section (col. 2, lines 15-20), wherein said respiratory tube has a sufficient length to reach the larynx and is thereby being interpreted as a laryngeal mask; and

an adapter (shown in Fig. 5) including a body having a first end **9**, a second end **5** and a passage therethrough, wherein the first end has an elliptical cross section sized to connect externally to said respiratory tube (Figs. 3 and 1), and the second end has a circular cross-section that is different from the first end (Fig. 1), and wherein the cross-section of the ends are perpendicular to the longitudinal axis of the body.

Galleher discloses the claimed invention except for the first end connecting internally to said respiratory tube. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the first end connect internally instead of externally to said respiratory tube, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Gazda*, 219, F.2d 449, 104, USPQ 400 (CCPA 1955).

(claim 2) The second end as a circular cross-section.

(claim 3) Galleher discloses a rib **10** for securing/positioning said respiratory tube. The modification to reverse the attachment of the respiratory from the inside of the adapter to the outside of the adapter would have the rib **10** located on the external surface of the adapter.

(claim 4) There is a wall member **14** substantially centrally located between the first and second ends of the adapter.

(claim 5) See the rejection to claims 1-4.

(claim 6) The second end of the adapter is capable connecting to another medical tube. Note that the "another tube" is not positively recited in the claim.

(claims 7 and 8) The passage gradually transitions from the first end to the second end (Fig. 1).

(claim 9) The tubing is part of a second medical device (the respiratory tube).

### ***Response to Arguments***

5. Applicant's arguments filed 5/29/07 have been fully considered but they are not persuasive.

The rejections under Galleher are maintained because Galleher discloses a respiratory tube having a length that is capable of reaching the larynx of a patient. Thus, it is readable as a "laryngeal" mask. It is noted that the applicant has not provided any specific structure to differentiate a laryngeal mask and a respiratory airway tube. Applicant's own patent, 6,705,312, is an example of where the claimed invention clearly states the structure of a "laryngeal mask".

With regards to the argument that Galleher fails to show the claimed elements of a connection between the first end of Applicant's adapter and a tube include in a laryngeal mask, it is noted that the respiratory tube 12 itself is the claimed laryngeal mask having an end portion with a tube that connects to the adapter shown in Fig. 5.

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Wall plate 14 is not being interpreted as the laryngeal mask, but rather the claimed wall member in claim 4.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darwin P. Erezzo/  
Examiner  
Art Unit 3731

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